STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1995, A09-2051

United Properties Investment, LLC,
Respondent,

vs.

Richfield Motors, Inc. d/b/a Metro Mitsubishi, et al.,
Defendants (A09-1995),
Appellants (A09-2051),

Charles David Luther, et al.,
Appellants (A09-1995),
Defendants (A09-2051)

Filed August 24, 2010
Affirmed in part, reversed in part, and remanded
Wright, Judge
Concurring in part, dissenting in part, Ross, Judge

Hennepin County District Court
File No. 27-CV-08-31525

Patrick J. Rooney, II, Alyson M. Palmer, Fafinski, Mark & Johnson, Eden Prairie, Minnesota (for respondent United Properties Investment)

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Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

In these consolidated appeals from summary judgment in favor of respondent, appellants challenge the district court's interpretation of a lease guaranty. Appellants argue that the district court erred by (1) concluding that the guaranty provides for appellants' joint and several liability, rather than fractional liability, and (2) failing to address appellants' argument that attorney fees are included in the guaranteed lease obligation subject to limits on each appellant's liability. We affirm in part, reverse in part, and remand.

FACTS

On April 28, 1997, appellant Richfield Motors, Inc. executed a lease to rent property in Bloomington from Peerless Land Company until May 2009. On the same day, Mark O'Brien and appellants Charles Luther, Rudy Luther, and Ted Terp executed a joint personal guaranty for the lease. Peerless Land Company subsequently assigned the lease and guaranty to respondent United Properties Investment, LLC (UPI). Richfield Motors stopped paying its lease obligations in February 2008, and UPI sent Richfield Motors monthly letters notifying it of the default. In June 2008, UPI began sending monthly default notices to the four guarantors.

UPI initiated legal action in December 2008 to recover under the lease and guaranty. Based on the undisputed evidence of Richfield Motors' default, UPI moved for summary judgment. Richfield Motors did not respond to the motion. Charles Luther, Rudy Luther, and Terp (collectively guarantors) did not contest liability but argued that

the guaranty provided for fractional, rather than joint and several, liability. The district court granted UPI's motion and held Richfield Motors and the guarantors jointly and severally liable for past-due rent, attorney fees, costs, and utility bills totaling $491,383.46. These consolidated appeals followed.

D E C I S I O N

Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A district court's grant of summary judgment will be affirmed if it can be sustained on any ground. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

The guarantors challenge the district court's interpretation of the guaranty with respect to liability and attorney fees.[1] Contract interpretation presents a question of law, which we review de novo. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d

[1] These consolidated appeals concern only the district court's interpretation of the guaranty. Richfield Motors is not a party to the guaranty. Accordingly, although Richfield Motors is listed as an appellant and submitted a joint brief with Terp, our decision regarding the interpretation of the guaranty does not affect the district court's summary judgment against Richfield Motors.

390, 394 (Minn. 1998). The primary goal of contract interpretation is to determine and enforce the intent of the contracting parties. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). We discern the intent of the parties from the plain language of the contract when viewed as a whole. *Brookfield Trade Ctr.*, 584 N.W.2d at 394; *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 293, 135 N.W.2d 681, 685 (1965). In doing so, we construe the terms of a contract in a manner that gives all of its provisions meaning. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). But we will not construe contract terms to yield an absurd result. *Brookfield Trade Ctr.*, 584 N.W.2d at 394. When a contract is subject to more than one reasonable interpretation, it is ambiguous. *Blackburn, Nickels & Smith, Inc. v. Erickson*, 366 N.W.2d 640, 644 (Minn. App. 1985), *review denied* (Minn. June 24, 1985). Determining whether a contract is ambiguous presents a question of law, which we review de novo. *Republic Nat'l Life Ins. Co. v. Lorraine Realty Corp.*, 279 N.W.2d 349, 354 (Minn. 1979).

I.

The guarantors first contend that each of them is only fractionally liable to UPI under the guaranty, which is contrary to the district court's conclusion that they are jointly and severally liable. The guaranty provides, in pertinent part, that

> the undersigned (the "Guarantors") do hereby jointly and severally, absolutely and unconditionally, guaranty to Landlord, its successors and assigns, the full and prompt payment when due, of all Rent, Base Rent, Additional Rent and any and all other sums coming due under the Lease . . . together with the full and prompt payment of all damages that may arise or be incurred by Landlord in consequence of

> Tenant's failure to perform such covenants and agreements (all such payments, obligations and agreements being hereinafter collectively referred to as the "Lease Obligations"). . . .
>
> The liability of the Guarantors shall be joint and several as to all Lease Obligations; provided, however, and notwithstanding anything set forth in this Lease Guaranty to the contrary, the liability of each of the Guarantors shall be limited so that each of the Guarantors shall be liable and responsible under this Lease Guaranty for the following percentage of each and every Lease Obligation:
>
> | Guarantor | Percentage of Each Lease Obligation for Which Liable |
> |---|---|
> | Mark O'Brien | 50% |
> | Ted Terp | 25% |
> | Rudy Daniel Luther | 12.5% |
> | Charles David Luther | 12.5% |
>
> Notwithstanding the percentage limitations on liability set forth above, if a Lease Obligation in default is cured by one or more of the Guarantors, this Lease Guaranty will continue in full force and effect, and the percentages set forth above will not be altered as a result of said reinstatement or cure.
>
> . . . .
>
> . . . The liability of the Guarantors shall only be terminated by payment in full to Landlord of all Lease Obligations.

The guaranty thus contemplates both joint and several liability and fractional liability.

The guarantors agree that the references to joint and several liability refer to their liability to UPI but argue that the fractional-liability provision limits each guarantor's liability to the specified fraction of UPI's damages. But if both liability provisions apply to the guarantors' liability to UPI, then the guaranty contains contradictory provisions. The guaranty provides that the guarantors are jointly and severally liable for "all Lease Obligations" and for "all damages" resulting from Richfield Motors' failure to pay. This

means that "each liable party is individually responsible for the entire obligation." *Black's Law Dictionary* 997 (9th ed. 2009) (defining joint and several liability); *see also* Minn. Stat. § 548.20 (2008) ("All parties to a joint obligation, including . . . all contracts upon which they are liable jointly, shall be severally liable also for the full amount thereof."). But the guaranty also provides that each guarantor is liable for only a portion of "each and every Lease Obligation." Because application of both liability provisions to determine the guarantors' liability to UPI requires each guarantor to be liable both for the entirety of UPI's damages and for only a fraction of UPI's damages, we cannot give effect to both provisions.

The plain language of the guaranty also does not supply a basis for preferring one liability provision over the other. The guarantors contend that the fractional-liability provision is more specific and, therefore, should control over the more general joint-and-several-liability provision. *See* Restatement (Second) of Contracts § 203(c) (1981) ("[S]pecific terms and exact terms are given greater weight than general language[.]"). We are not persuaded. Although joint and several liability is broader than fractional liability, the two provisions equally address the guarantors' liability. Neither provision is more specific than the other. The guarantors also assert that the language in the guaranty that provides that the factional-liability provision controls "notwithstanding anything set forth in the Lease Guaranty to the contrary" mandates enforcement of the fractional-liability provision, rather than the joint-and-several-liability provision. But we reject this interpretation advanced by the guarantors because it requires us to ignore the entire first page of the guaranty, which produces an absurd result that is contrary to fundamental

principles of contract interpretation. *See Brookfield Trade Ctr.*, 584 N.W.2d at 394 (avoid absurd result); *Current Tech. Concepts*, 530 N.W.2d at 543 (all provisions must be given meaning). The plain language of the guaranty thus provides two equally viable but mutually exclusive liability provisions.

When two provisions of a contract conflict, "it is the [district] court's duty to find harmony between them and to reconcile them if possible." *Oster v. Medtronic, Inc.*, 428 N.W.2d 116, 119 (Minn. App. 1988). If such harmony and reconciliation evade construction of the two provisions based on the plain language of the contract, the contract is ambiguous. *Morris v. Weiss*, 414 N.W.2d 485, 487-88 (Minn. App. 1987) (citing *Rusthoven v. Commercial Standard Ins. Co.*, 387 N.W.2d 642, 644 (Minn. 1986) (recognizing that an "irreconcilable conflict" between contract provisions creates ambiguity). Accordingly, we next consider whether an alternative interpretation reasonably harmonizes the two liability provisions.

The district court determined that the two liability provisions could be harmonized by interpreting the fractional-liability provision to define the guarantors' contribution liability to each other rather than the guarantors' liability to UPI. When a debtor pays more than his or her share of a debt, the debtor may have an equitable right of contribution from co-debtors. *Senn v. Youngstedt*, 589 N.W.2d 314, 315-16 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). And co-debtors may establish their shares of a debt by contract. *See Estate of Frantz v. Page*, 426 N.W.2d 894, 901 (Minn. App. 1988) (stating that guarantors may agree to "share the possible burden on some basis other than that of strict proportionate contribution" (quotation omitted)), *review denied*

(Minn. Sept. 16, 1988). Thus, the guarantors could have agreed to be jointly and severally liable to UPI while simultaneously dividing the responsibility for damages among themselves.

The plain language of the guaranty, however, does not reflect any such contribution agreement. The guaranty does not expressly address contribution or the rights of the guarantors as against each other. And we cannot construe a guaranty that does not reference contribution or otherwise explicitly address the guarantors' obligations to each other to include an intent to address co-guarantors' contribution rights when such an agreement is immaterial to the obligee, for whose benefit the guaranty is intended. *See Borg Warner Acceptance Corp. v. Shakopee Sports Ctr., Inc.*, 431 N.W.2d 539, 541 (Minn. 1988) (stating that a guaranty, as security for performance, is a "prudent business precaution" benefiting an obligee); *see also Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010) (stating that "the apparent purpose of the contract as a whole" is considered in determining whether the contract is ambiguous). Because the plain language of the guaranty does not indicate an intent to address the guarantors' contribution rights, the district court erred by concluding that the guaranty unambiguously provides for fractional liability among the guarantors.

Without a basis for reconciling the conflict between the guaranty's two liability provisions, we conclude that the guaranty is ambiguous. Interpretation of an ambiguous contract presents a fact question regarding the parties' intent. *Kilcher v. Dale*, ___ N.W.2d ___, ___, 2010 WL 2813552, at *3 (Minn. App. July 20, 2010). As such, summary judgment was inappropriate here. *See* Minn. R. Civ. P. 56.03 (stating that

summary judgment can be granted if, among other things, there is no genuine issue of material fact). We, therefore, remand for the determination of the parties' intent regarding the extent of the guarantors' liability.

II.

The guarantors also challenge the district court's attorney-fee award. The district court awarded $39,229.70 to UPI "for attorney fees associated with collecting under the Lease" and included that sum in the total judgment against each guarantor. The guarantors argue that the district court erred by failing to address their argument that attorney fees are lease obligations and should be apportioned pursuant to the specific percentages in the guaranty. This argument is unavailing.

In its first sentence, the guaranty provides for joint and several liability and defines "Lease Obligations." In the next sentence, the guaranty provides:

> The undersigned further agree to pay all expenses, including attorney fees and legal expenses, paid or incurred by Landlord in endeavoring to collect or enforce the Lease Obligations or any part thereof and in enforcing this Lease Guaranty, such payment and performance to be made or performed by the undersigned forthwith upon a default by Tenant.

This echoes language in the lease: "In addition to all other remedies hereunder, the non-defaulting party shall be entitled to immediate reimbursement of all reasonable attorney fees incurred in connection with any default by the other party."

The guarantors argue that attorney fees should be considered lease obligations under the guaranty. But the guaranty plainly separates the agreement to pay attorney fees from the list of lease obligations for which the guarantors are assuming responsibility.

The lease similarly separates attorney fees from lease obligations by defining attorney fees as a "remedy." The plain language of the guaranty and the lease, therefore, establishes that the attorney fees are not lease obligations, even if the requirement to pay them is triggered by the failure to pay lease obligations.

The guarantors also argue that excluding attorney fees from lease obligations leads to an absurd result because the guaranty provides for termination of the guarantors' liability upon "payment in full to Landlord of all Lease Obligations." The guarantors contend that such payment would eliminate the requirement to pay attorney fees if those fees are not considered lease obligations. But the "liability" provision on which the guarantors rely addresses liability for lease obligations. The attorney-fee provision, by contrast, consistently is framed as a separate, contingent agreement or remedy. It, therefore, is not subject to the guarantor's termination-of-liability provision.

Accordingly, we conclude that the district court did not err by holding the guarantors jointly and severally liable for UPI's attorney fees pursuant to the guaranty.

Affirmed in part, reversed in part, and remanded

ROSS, Judge (concurring in part, dissenting in part)

I respectfully dissent from section I of the majority's analysis and opinion, but I agree with section II.

"Notwithstanding" is a powerful and plain word. Its meaning is unmistakable. It is predictive, illuminating, and directive. Read in its context, it predicts that the reader will find an apparent contradiction. It then illuminates the nature of that contradiction. And finally, it directs the reader to resolve the contradiction by subordinating the identified thing that cannot withstand to the identified thing that must prevail.

In this case, the thing that cannot withstand is joint and several liability, and the thing that must prevail is proportionate liability. We do not need to remand this case for the district court to reconcile two *actually irreconcilable* and therefore ambiguous contract provisions, as the majority holds. There is no actual conflict. Rather, we should observe merely that the guaranty contains its very own syntactically clear, self-reconciling provision that directs exactly how we are supposed to treat the two *otherwise irreconcilable* provisions.

I can simplify the relevant provisions of the guaranty with this paraphrase: *The guarantors are jointly and severally liable as to all lease obligations.* ***Notwithstanding anything*** *in this document* ***to the contrary****, each of the guarantors shall be liable only for a portion of the liability according to specified limited portions, as follows . . . .*

I agree that the two provisions of the guaranty are *nearly* irreconcilable because, as the majority correctly observes, parties cannot be proportionately liable while they are also jointly and severally liable for the same injury. So of course we cannot, as a matter

of reason, apply both provisions simultaneously. But the guaranty does not ask us to. Instead, it avoids the problem altogether and reconciles the apparent contradiction unambiguously by including the only word in the document—"notwithstanding"—to which the majority expressly gives no effect (deeming it "absurd" to choose either of the conflicting provisions over the other because the guaranty includes both provisions).

The majority's analysis is lucid, reasoned, and persuasive. It is difficult to find any basis on which I can disagree with it. And it is a model of deductive logic. Notwithstanding anything I have suggested to the contrary, I dissent from section I of the majority opinion.